

*Mr. Harris file.*  
*Dr. Milner*

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
3 CAUSE NO:839/97

4  
5  
6  
7  
8  
9 BETWEEN : KEMPTON M. WEBSTER PLAINTIFF

10  
11 AND : (1) REGISTRAR OF LANDS DEFENDANTS

12  
13 AND : (2) AUDREY THOMPSON - EBANKS  
14 ROBERT EBANKS, ROXIE BODDEN AND  
15 ARAUNAH POWERY as joint trustees.  
16

17  
18  
19  
20 BEFORE MURPHY, J.

21  
22 7 September, 1998  
23  
24  
25  
26  
27

28 For applicant/ second defendants :D. Scharschmidt Q.C.  
29 N. Levy  
30

31 For respondent/plaintiff : P. Lamontagne Q.C.  
32 S. Brooks  
33  
34

35 REASONS FOR DECISION  
36  
37

38 In a document forming part of an exhibit in this proceeding (not relevant to  
39 the application before me) I find the Biblical quotation, "Now I beseech you,  
40 brethren, mark them which cause divisions and offences, contrary to the doctrine  
41 which ye have learned; and avoid them". Contrary to that exhortation by St.  
42 Paul to the Romans (16:17), and to notions of Christian charity, opposing



1 factions within two congregations of The Church of God, in West Bay and  
2 Breakers, are doing battle in four actions in this Court. Sadly, the underlying  
3 disputes are “stung by the venom of deceit, lies and violence”, to quote from an  
4 attorney’s letter.

5  
6 **Related litigation**

7  
8 The litigation involving the West Bay and Breakers congregations focuses  
9 upon rectifications made in July 1997 to the land registers for parcels upon  
10 which are situated the various Church of God church buildings.

11 These rectifications resulted in the second defendants herein becoming registered  
12 proprietors “as joint trustees”. Prior thereto, the registered proprietors  
13 appeared as “The Church of God” or some variant of that name, indicating a  
14 voluntary association.

15  
16 It is sufficient for present purposes merely to say that other members of the  
17 West Bay and Breakers congregations objected to the new registrations. This  
18 reflects of course a fundamental rift within the two congregations mentioned.

19  
20 In the West Bay litigation purported trustees, including those now shown on  
21 the register, have sued members of the congregation for, inter alia, trespass and  
22 property damage (Cause no. 816/97). The defendants in that action have  
23 responded with an action (Cause no. 835/97) in which rectification of the register  
24 is sought.



1

2       **As to the Breakers church, the purported trustees now shown on the register**  
3 **sue an individual regarded by some as an Overseer or Pastor (or former**  
4 **Overseer or Pastor) for trespass and seek an injunction barring him from the**  
5 **premises (Cause 817/97).**

6

7       **In the present Cause (839/97) another member of the Breakers congregation,**  
8 **Kempton M. Webster, seeks judicial review of the Registrar's decision to alter**  
9 **the register for the parcel on which is situated the Breakers church. In this**  
10 **Cause, Graham J. on 23 December 1997 granted leave to the plaintiff to apply**  
11 **for judicial review.**

12

13       **The present application**

14

15       **The application before me is one brought by the second defendants (the**  
16 **purported trustees on the register) to strike out the proceedings brought for**  
17 **certiorari by the plaintiff, "on the ground that the plaintiff has no locus standi to**  
18 **bring such proceedings, the said proceedings are an abuse of the process of the**  
19 **Court, [and] the said proceedings are brought to embarrass or delay the fair trial**  
20 **of Cause 817 of 1997 brought by the four defendants against one Essau Brooks**  
21 **for trespass to land which is also the subject of these proceedings".**

22

23       **The first defendant herein, the Registrar of Lands, takes no position, and was**  
24 **not represented, on the application before me.**



1

2 As indicated, the proceedings in which the present application forms a part,  
3 involve the Breakers church. I mention in passing that in Cause no. 835/97, the  
4 defendants, some West Bay congregation members including the purported  
5 trustees on the register, brought applications to discharge an ex parte injunction,  
6 and also to strike the statement of claim as disclosing no reasonable cause of  
7 action or being frivolous or vexatious or as an abuse of the process of the Court.  
8 In an unreported decision dated 7 August 1998, Douglas J. dismissed those  
9 defendants' applications.

10

11 Factual background

12

13 I provide some brief background to the application before me. In doing so I  
14 am being careful, as I must, to dispose of the rather technical procedural points  
15 without trenching or infringing upon matters of substance which will be the  
16 concern of other Courts in this and related causes. I do not regard the basic  
17 factual backdrop as being in dispute in any case, and my actual reasons for  
18 decision, in the circumstances, can be brief. For greater certainty, however, I  
19 make clear that it is not my intention to make, and I expressly do not make, any  
20 factual findings or legal conclusions apart from the very narrow ones necessary  
21 to decide the procedural issues before me.

22

23

24 The plaintiff, Kempton M. Webster, an active member of The Church of God  
25 at Breakers, on 12 June 1950 by deed of gift, gave the land described as



1 Registration Section Breakers, Block 52 C, Parcel 18 (“the land”) to trustees to  
2 be used for church purposes. The church was built and used for the intended  
3 purposes.

4  
5 The land was adjudicated to “The Church of God” as the proprietor thereof,  
6 as a result of the adjudication process, on 7 July 1975 and registered accordingly  
7 when the first register was opened on 28 August, 1976. “The Church of God” is  
8 arguably a voluntary association; it is not a corporate entity.

9  
10 In February 1997 the plaintiff applied to the Registrar for a change in the  
11 stated postal address of “The Church of God”. The Registrar declined to  
12 comply with that request on the ground (disputed in these proceedings) that the  
13 land should be properly recorded in the name of the church trustees. The  
14 plaintiff took no further action pursuant to his request.

15  
16 On or about 21 July 1997 the second defendants applied for the rectification  
17 of the register with respect to the land. They sought a change in the name of the  
18 registered proprietor from “The Church of God” to their own names and  
19 addresses. The Registrar apparently believed that the second defendants’  
20 application was made pursuant to his letter to the plaintiff suggesting the same in  
21 February 1997, and granted it in July 1997.

22  
23 There was no connection between the plaintiff’s application of February 1997  
24 and that of the second defendants of July 1997.



1  
2       **The evidence is that neither the plaintiff nor, so far as he knows, any other**  
3 **member of The Church of God at Breakers was aware that the name of the**  
4 **registered proprietor had been changed, until 19 November 1997 after some**  
5 **unpleasant incidents at the West Bay church caused them to investigate the state**  
6 **of the register for their church land.**

7  
8       **The trespass action against the alleged former Overseer or Pastor (Cause**  
9 **817/97) followed in early December. Later that month the plaintiff brought his**  
10 **judicial review proceedings alleging, essentially, that the Registrar's decision to**  
11 **rectify the register was illegal and contrary to principles of fairness.**

12  
13  
14       **Grounds for attack upon the judicial review application**  
15  
16

17       **It became apparent to me that the second defendants' attack upon the judicial**  
18 **review application herein was a much narrower one than was mounted**  
19 **unsuccessfully against the claim in the West Bay proceedings. Accordingly it can**  
20 **be dealt with on quite narrow bases.**

21  
22  
23               **i) Locus standi:**  
24  
25

26       **Order 53, rule 3 (7) provides that "the Court shall not grant leave unless it**  
27 **considers that the applicant has a sufficient interest in the matter to which the**  
28 **application relates". Of course, the application for leave is ex parte, and the**



1 locus standi issue per se is unlikely to be canvassed fully at that stage. I do not  
2 think that there is anything procedurally improper in making the issue the  
3 subject of an application such as this.

4  
5 There is, however, leading House of Lords authority, Inland Revenue  
6 Commissioners v National Federation of Self Employed and Small Businesses  
7 Ltd. [1981] 2 All E.R. 93 that would suggest that normally the desirable course  
8 is to leave the matter of standing to the court hearing the substantive judicial  
9 review application. As Lord Wilberforce put it at 96-7:

10  
11  
12 “There may be simple cases in which it can be seen at the  
13 earliest stage that the person applying for judicial review  
14 has no interest at all, or no sufficient interest to support the  
15 application; then it would be quite correct at the threshold  
16 to refuse him leave to apply. The right to do so is an  
17 important safeguard against the courts being flooded and  
18 public bodies harassed by irresponsible applications. But  
19 in other cases this will not be so. In these it will be  
20 necessary to consider the powers or the duties in law of  
21 those against whom the relief is asked, the position of the  
22 applicant in relation to those powers or duties, and the  
23 breach of those said to have been committed. In other  
24 words, the question of sufficient interest cannot, in such  
25 cases, be considered in the abstract, or as an isolated point:  
26 it must be taken together with the legal and factual context.  
27 The rule requires sufficient interest in the matter to which  
28 the application relates. This, in the present case,  
29 necessarily involves the whole question of the duties of the  
30 Inland Revenue and the breaches or failure of those duties  
31 of which the federation complains”.

32  
33 Lord Scarman (at 113) would have limited any initial screening to preventing  
34 “abuse by busybodies, cranks and other mischief makers”.



1

2 I do not regard the plaintiff here as having “no interest at all, or no sufficient  
3 interest to support the application”. He is not a busybody or crank.  
4 Procedurally I would have no compunction about leaving this issue (if it is a real  
5 issue) to the Court hearing the substantive application. However I regard the  
6 matter as so clear here that I will determine it at this stage.

7

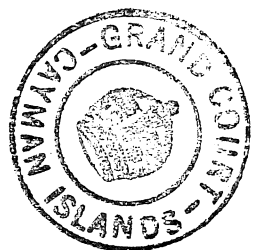
8 The second defendants submit (in their written argument) that “the Applicant  
9 herein is a mere busybody [and] takes sides with the Defendant Brooks [in  
10 Cause 817/97] and seeking (sic) to gain a tactical advantage on his behalf”.

11

12 I pause to observe that the present Cause and Cause 817/97 are conceptually  
13 different and involve different sets of parties. Nothing in Cause 817/97 will  
14 assist the plaintiff in the present Cause in having the register rectified.

15

16 In response to some hypothetical questioning by me, second defendants’  
17 counsel conceded that a member of the Church would have standing. He took  
18 the position, though, that the plaintiff brought these proceedings merely as one  
19 who gifted the land in 1950, not as a member of the Church. This ignores the  
20 uncontradicted evidence (plaintiff’s affidavit, para 1) that the plaintiff is “an  
21 active member of the Church of God at Breakers”. In another affidavit sworn  
22 13 February 1997 in the context of the application to rectify the address of the  
23 Church on the register (which application and evidence the second defendants  
24 rely upon in another aspect of their argument), the plaintiff makes it clear that

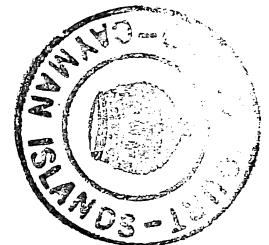


1 he is “ a Deacon and Member of the Church of God at Breakers where I have  
2 worshipped from in the early 1950’s”.

3  
4 I confess to some considerable difficulty understanding who would have  
5 standing if someone like the plaintiff does not.

6  
7 There was some suggestion in argument that the plaintiff, once rebuffed in his  
8 attempt to have the register rectified in February 1997 to change the Church’s  
9 mailing address, had somehow prejudiced his standing. I reject this. The  
10 unchallenged evidence is that the subject rectification in favour of the second  
11 defendants was not even made until July 1997, and the plaintiff and those in  
12 sympathy with him had no reason to suspect until November 1997 that “The  
13 Church of God” was no longer the registered proprietor.

14  
15 Second defendants’ counsel submitted that a Church member could not have  
16 standing if his “motive is not the correct motive”. He invited me to conclude  
17 that the plaintiff’s prosecution of the judicial review application was not bona  
18 fide and that he was merely using the procedure for an “ulterior motive” -  
19 presumably a tactical manoeuvre to frustrate the second defendants’ prosecution  
20 of Cause 817/97 in which they are plaintiffs: see an annotation summarising  
21 judicial disapproval of this in M. Fordham, Judicial Review Handbook (2nd  
22 ed) at para. 5.1.2.



1 (Here I observe that the second defendants' attack takes on somewhat the  
2 same character as their attack on the claim in the West Bay proceedings. I  
3 agree with Douglas J's basic (and rather self-evident) conclusion there that a  
4 proceeding to challenge title to land that will, if successful, have the effect of  
5 undermining another's claim, can hardly be an abuse of process.)  
6

7 The thin basis upon which I was invited to find *mala fides* on the plaintiff's  
8 part was the "suspicious" evidence of the plaintiff that the rectification of the  
9 register was not discovered until November 1997, and that Cause 839/97 was  
10 commenced after Cause 817/97. I could never responsibly make a finding of  
11 *mala fides* on the basis of this "evidence". In any case the plaintiff's evidence  
12 1) as to the circumstances leading to the discovery of the rectification of the  
13 register and 2) that the judicial review application was not prompted by the  
14 trespass action, stands uncontradicted and I accept it.  
15

16 I have no hesitation in concluding that the plaintiff has *locus standi* to bring  
17 this application for judicial review.  
18  
19  
20

21 ii) Alleged abuse of process/embarrassing proceedings  
22  
23

24 Under this head, the second defendants' attack was extremely narrow and  
25 technical. It was largely couched in terms of "jurisdiction", or more accurately  
26 the plaintiff's supposed "waiver" of or "acquiescence" in the Registrar's  
27 February 1997 decision not to rectify the register, which, second defendants'



1 counsel submitted, somehow precluded the plaintiff from challenging a  
2 subsequent rectification ( the July 1997 rectification). The argument was that  
3 because the plaintiff had made application in February, 1997 he could not  
4 maintain that the Registrar had no power to rectify in other circumstances in  
5 July 1997.

6  
7  
8 I confess that I found this submission bizarre and unreal. As indicated above  
9 the plaintiff in February 1997 attempted unsuccessfully to have the register  
10 rectified in a minor way ( presumably pursuant to the provisions of s. 139 of the  
11 Registered Land Law (1995 Revision)) to change the Church's mailing address.  
12 The plaintiff and other congregation members had no inkling of a substantive  
13 rectification of the register out of the Church's name and into that of the second  
14 defendants until November 1997. That prompted this application for judicial  
15 review.

16  
17 How the plaintiff is estopped, by his February 1997 action or inaction viz-a-  
18 viz the Registrar, from making an issue of an administrative decision in July  
19 1997 which he only discovered in November 1997, I do not know. Pathetic  
20 attempts by the second defendants' counsel, when pressed by me on this point, to  
21 characterize the plaintiff's unchallenged affidavit evidence as "not credible" do  
22 not avail. I reject this "jurisdiction" argument.

23  
24 Perhaps the strangest part of the application was a submission by second  
25 defendants' counsel to the effect that " the documents relied upon by the



1 Applicant [ that is the affidavit in support of the judicial review application, with  
2 exhibits] were not the documents on which the Registrar relied to make his order  
3 and do not constitute the record in the matter in which judicial review is  
4 sought”.

5  
6 In making this submission, defendants’ counsel seemed to lose sight of the fact  
7 that the plaintiff’s application does not assert “error of law on the face of the  
8 record,” but rather lack of jurisdiction and/or absence of procedural fairness.

9  
10 Second defendants’ counsel initially seemed to suggest that I could not have  
11 regard to the plaintiff’s affidavit filed in support of the judicial review  
12 application. This submission was made, surprisingly, despite the facts that  
13 1) the second defendants themselves had filed evidence on the application before  
14 me, and 2) second defendants’ counsel conceded that the plaintiff’s affidavit  
15 could be considered by the Court hearing the substantive judicial review  
16 application !

17  
18 In response to my queries, second defendants’ counsel ultimately conceded  
19 that I could have regard to the affidavit. When counsel for the plaintiff  
20 indicated that the plaintiff would rely only upon exhibits 1 through 10 ( all, by  
21 their nature, clearly to be found in the Registrar’s file), defendants’ counsel  
22 conceded that I could have regard to them as well. In any event, the balance of  
23 the exhibits, consisting largely of rambling handwritten and pamphlet accounts  
24 of church history (and included only out of an abundance of caution pursuant to



1 a duty to make full and frank disclosure on the ex parte application for leave)  
2 are of no assistance to me on this application and I have not considered them.  
3 There is no issue here, despite weak efforts to manufacture one.

4

5 This application was futile, pointless and devoid of merit. I dismiss it in its  
6 entirety, with costs to the plaintiff in the cause.

7

8

9

10

11

12

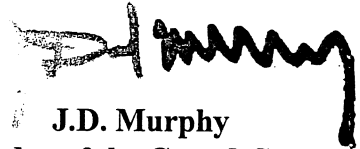
13

14

15

16

17

  
J.D. Murphy  
Judge of the Grand Court

